



# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER  
GOVERNOR

Certified Mail: 7003 1680 0000 6167 6995

December 17, 2009

Mr. William Peeler  
Interim Director  
Merced County Division of Environmental Health  
777 West 22<sup>nd</sup> Street  
Merced, California 95340

Dear Mr. Peeler:

The California Environmental Protection Agency (Cal/EPA), California Emergency Management Agency, and the Department of Toxic Substances Control conducted a program evaluation of the Merced County Division of Environmental Health Certified Unified Program Agency (CUPA) on October 27 and 28, 2009. The evaluation was comprised of an in-office program review and field oversight inspections by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that Merced County Division of Environmental Health's program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Kareem Taylor every 90 days after the evaluation date; the first report is due on January 26, 2010.

Cal/EPA also noted during this evaluation that Merced County Division of Environmental Health has worked to bring about a number of local program innovations, including the creation of a local web portal for businesses to report hazardous materials data electronically. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program website to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by e-mail at [jbohon@calepa.ca.gov](mailto:jbohon@calepa.ca.gov).

Sincerely,

[Original Signed by Don Johnson]

Don Johnson  
Assistant Secretary  
California Environmental Protection Agency

Enclosure

cc: Sent via e-mail:

Mr. Mark Pear  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 210  
Berkeley, California 94710-2721

Mr. Fred Mehr  
California Emergency Management Agency  
3650 Schriever Avenue  
Mather, California 95655-4203

Ms. Terry Brazell  
State Water Resources Control Board  
P.O. Box 944212  
Sacramento, California 94244-2102

Mr. Kevin Graves  
State Water Resources Control Board  
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Ms. Asha Arora  
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Mr. William Peeler  
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cc: Sent via e-mail:

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Mr. Ben Ho  
Office of the State Fire Marshal  
P.O. Box 944246  
Sacramento, California 94244-2460

Chief Robert Wyman  
California Emergency Management Agency  
3650 Schriever Avenue  
Mather, California 95655

Mr. Jack Harrah  
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Enclosure



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## **CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS**

### **CUPA: Merced Division of Environmental Health**

**Evaluation Date: October 27 and 28, 2009**

### **EVALUATION TEAM**

**Cal/EPA: Kareem Taylor**

**Cal/EPA: Ernie Genter**

**Cal EMA: Fred Mehr**

**DTSC: Mark Pear**

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Kareem Taylor at (916) 327-9557.

	<b><u>Deficiency</u></b>	<b><u>Preliminary Corrective Action</u></b>
1	<p>The CUPA did not correctly report information on its Annual Summary Reports.</p> <ul style="list-style-type: none"> <li>In the fiscal year (FY) 2008/2009 Annual Inspection Summary Report (Report 3), the CUPA reported 100 percent of its CalARP routine inspections with Class 1 or Class 2 violations returned to compliance (RTC) within 90 days. In Annual Enforcement Summary Report (Report 4) for the same FY, the CUPA did not report any CalARP facilities with Class 1 or Class 2 violations.</li> <li>In the FY 2008/2009 Report 4, the CUPA reported 0 hazardous waste generator (HWG) facilities with Class 1 violations when the self audit for the same FY stated that 1 HWG facility was cited for a Class 1 violation.</li> <li>In the FY 2007/2008 Report 4, the CUPA reported 0 formal actions for the underground storage tank (UST) and HWG programs; however, 1 civil/criminal referral in the UST program and 3 AEOs in the HWG program were reported.</li> </ul> <p><b>CCR, Title 27, Section 15290 (a) (Cal/EPA)</b></p>	<p>This deficiency was corrected before the initial evaluation report.</p>
2	<p>In FY 2006/2007, the CUPA did not assess the CUPA Oversight surcharge of \$24 from all Unified Program</p>	<p>By January 28, 2010, the CUPA will review its financial records to verify</p>

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	<p>(UP) businesses in Merced County. The CUPA's FY 2006/2007 Annual Single Fee Summary Report (Report 2) shows that it assessed \$23,567. The CUPA should have assessed approximately \$28,200 from the 1175 regulated businesses it reported. The CUPA's assessed oversight surcharge in FY 2006/2007 is short by approximately \$4633 or 16%.</p> <p>After discussion with CUPA management, the large discrepancy in the FY 2006/2007 surcharge may be due to the CUPA not assessing single fees from approximately 153 regulated farms. The farms are currently assessed single fee that includes the Oversight surcharge.</p> <p><b>CCR, Title 27, Section 15250 (a) (Cal/EPA)</b></p>	<p>whether the CUPA Oversight surcharge and single fee information as reported on FY 2006/2007 Report 2 is correct.</p> <p>Report the findings in the CUPA's 1<sup>st</sup> progress report to Cal/EPA. If needed, submit the corrected FY 2006/2007 Report 2 to Cal/EPA.</p> <p>During the next billing period, the CUPA will assess and collect the Oversight surcharge from those UP businesses that were assessed the single fee, but were not assessed the required surcharge in FY 2006/2007.</p>
3	<p>The CUPA is not conducting inspections with a frequency that is consistent with its Inspection and Enforcement Plan and with the inspection of other program elements. The CUPA inspected 461 of the 743 or approximately 62% of all known HWG facilities generating hazardous waste over the past 3 FYs. The Report 3s submitted by the CUPA for the past three fiscal years indicate the following:</p> <ul style="list-style-type: none"> <li>• In FY 2008/2009, 743 HWG facilities were identified of which 146 were inspected</li> <li>• In FY 2007/2008, 693 HWG facilities were identified of which 162 were inspected</li> <li>• In FY 2006/2007 646 HWG facilities were identified of which 153 were inspected.</li> </ul> <p><b>CCR, Title 27, Section 15200 (a)(3) (DTSC)</b></p>	<p>By October 28, 2010, the CUPA will inspect at least one-third of its HWG facilities.</p> <p>The CUPA will inspect all HWG facilities, including tiered permitted facilities, once every 3 years.</p>
4	<p>The CUPA has not inspected all stationary sources that are subject to the CalARP program at least once every three years. In the last 3 fiscal years the CUPA inspected 10 of the 41 stationary sources.</p> <p><b>CCR, Title 19, Section 2775.3 (Cal EMA)</b></p>	<p>By October 28, 2010, the CUPA will inspect at least one-third of its CalARP facilities.</p> <p>The CUPA will inspect all CalARP stationary sources once every 3 years.</p>
5	<p>The CUPA has not inspected all facilities subject to business plan program at least once every 3 years. During the review of facility files, half of the files reviewed did not have inspection reports dated within the last 3 years. The Report 3s submitted by the CUPA indicate that 44% of the regulated businesses have not been inspected in the past 3 years.</p> <p><b>HSC, Chapter 6.95, Section 25508 (b) (Cal EMA)</b></p>	<p>By October 28, 2010, the CUPA will inspect at least one-third of its business plan facilities.</p> <p>The CUPA will inspect all business plan facilities once every 3 years.</p>

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<b>CUPA Representative</b>	<u>Joan Mulcare</u>	<u>Original Signed</u>
	(Print Name)	(Signature)

<b>Evaluation Team Leader</b>	<u>Kareem Taylor</u>	<u>Original Signed</u>
	(Print Name)	(Signature)

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

**PROGRAM OBSERVATIONS AND RECOMMENDATIONS**

*The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.*

1. **Observation:** Merced County Department of Public Health instituted a reduction in force that started in August 2009 due to the lagging economy. The CUPA lost two clerical personnel (1 support service analyst and 1 office assistant) that were responsible for office support, and data entry and general record keeping. The CUPA's efficiency has been adversely affected because inspectors have been diverted from field activities to perform clerical tasks previously preformed by the clerical personnel. As noted in the deficiencies section, inspection frequencies in 3 program areas are not being met. There is a concern that the inspection component of the UP will continue to suffer unless Merced County Department of Public Health makes significant adjustments to cover workload demands. The CUPA currently has 3 inspectors and 1 supervisor position.

**Recommendation:** Cal/EPA recommends that the CUPA consider adding staff to help cover the workload needs.

2. **Observation:** The CUPA started using Envision Connect in October 2008 and is continuing to improve its functionality for e-reporting, permitting, and hazardous materials information. Inspection and enforcement data cannot be entered into the data system currently, but the CUPA plans to add those functions and the ability to query Summary Report information. The CUPA currently hand-counts information to be entered into the Summary Reports.

**Recommendation:** none

3. **Observation:** The CUPA's FY 2008/2009 self audit does not consistently report the type of enforcement activities for all program elements. There were 10 HWG formal actions noted in the FY 2008/2009 Report 4, but only the 2 HWG AEOs were mentioned in the self audit. The other 8 formal actions were not reported in the self audit. There was also no detail in the self audit on the 3 UST formal actions noted in the FY 2008/2009 Report 4.

**Recommendation:** Cal/EPA recommends that the CUPA detail the type of formal actions taken in its subsequent self audit reports. The CUPA may add an enforcement log attachment similar to the one reviewed in the procedures binder that contains the specific formal actions for the reporting FY.

4. **Observation:** The CUPA was able to demonstrate that all complaints which were referred by DTSC from October 15, 2006 to October 15, 2009 were investigated. Follow-up documentation could be found for Complaints Nos. 09-0409-0194, 06-1006-0548, 06-1106-0594, 08-0308-0171, 08-0608-0449, 08-0208-0120 and 09-0709-0389.

**Recommendation:** Continue to follow up on referred complaints. Please send Nancy Lancaster, the DTSC complaint coordinator [email: nlanchester@dtsc.ca.gov], the e-mail address of UP staff person who is responsible for receiving complaints. Please document all complaints either by inspection report or by "note to file" placed in the facility file. An investigation does not always require an inspection, as many issues may be resolved by other means such as a phone call. Notify the DTSC complaint coordinator of the disposition of all complaints.

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- 5. Observation:** Chief Mitten of Merced City Fire Department was pleased with the business plan information received from the CUPA. The CUPA and Merced City Fire Department have an excellent working relationship.

**Recommendation:** none

- 6. Observation:** The CUPA inspector conducted an adequate HWG oversight inspection. The inspector asked for consent, took photographs, and toured the entire site. Record keeping relating to hazardous waste including manifests, contingency plan, training plan, and training records were reviewed. The inspector noted her findings and concluded the inspection with a close out of her summary of violations on site and addressed the operator's concerns.

**Recommendation:** none



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**EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION**

1. The Merced CUPA operates a Permanent Household Hazardous Waste – Permit-By-Rule facility and a Recycle-Only facility that provide economical disposal and recycling of hazardous and universal wastes to residents and small businesses in the county. The CUPA also provides household hazardous waste collection in other cities and locations within the county.
2. The Merced CUPA has developed and implemented a web portal for businesses to report business plan and waste inventory information electronically. Outreach to the regulated community has resulted in 55 businesses submitting information electronically. The CUPA is also hosting web portal training for local fire agencies (facilitated by E-Compliance) so that emergency responders may have instant web access to crucial chemical inventory information. The portal is accessed by entering a user name and an alphanumeric password. The CUPA has established built-in processes for notifying staff of new submittals, reviewing and approving or denying submittals, and comparing current submittals with previous ones. The portal includes a function that illustrates the status of the data submitted (i.e. initial, rejected, accepted, pending submittals). The CUPA is working to expand the system to cover all the CUPA programs.
3. The Merced County Department of Public Health has a robust enforcement program. The CUPA has a great relationship with the County District Attorney who has been active on many civil and criminal cases. Also, the CUPA has developed an enforcement log table detailing all of the formal enforcement actions taken. Below are 3 administrative enforcement cases reviewed during the evaluation:
  - Settled an AEO with West-Mark Corporate Offices for \$3,600 in penalties. Respondent failed to determine if a bag-house waste (plasma welding table dust) is a hazardous waste according to acceptable methods set forth in regulation.
  - Settled an AEO with O’Keeffe’s Inc. for \$10,500 in penalties. Respondent illegally disposed of the carcinogenic waste acrylamide (from 250 gallon size totes used at the facility) into the sanitary sewer.
  - Settled an AEO with Atwater Iron & Metal for \$9,000 in penalties for accepting and transporting hazardous waste (brake dust).